Local Joint Executive Board of Las Vegas, Culinary Workers Union Local 226 and Bartenders Union Local 165, affiliated with Hotel Employees & Restaurant Employees International Union, AFL–CIO *and* Santa Fe Operating Limited Partnership d/b/a Santa Fe Hotel and Casino

Santa Fe Operating Limited Partnership d/b/a Santa Fe Hotel and Casino *and* International Brotherhood of Teamsters Local 995, AFL–CIO; International Union of Operating Engineers Local 501, AFL–CIO; Local Joint Executive Board of Las Vegas; Culinary Workers Union Local 226 and Bartenders Union Local 165, affiliated with Hotel Employees & Restaurant Employees International Union, AFL–CIO, Joint Petitioners. Cases 28–CB–4012, 28–RC–5146, 28–RC–5147, and 28–RC–5148

August 28, 1995

DECISION, ORDER, AND CERTIFICATION OF REPRESENTATIVE

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On April 20, 1995, Administrative Law Judge David G. Heilbrun issued the attached decision. The Charging Party filed exceptions and a supporting brief, and the Joint Petitioners[1] and the Respondent filed an answering brief to the Charging Party's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions[3] and to adopt the recommended Order.

ORDER

The recommended Order of the administrative law judge is adopted and the complaint is dismissed.

IT IS FURTHER ORDERED that a certification of representative should be issued.

[1] The Joint Petitioners' motion to sever the unfair labor practice case from the representation case is denied as moot. The Charging Party filed a response to this motion.

[2] The Employer/Charging Party has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[3] We adopt the judge's recommendation to overrule as untimely that part of the Employer's Objection 1 which alleged that the Joint Petitioners engaged in ''list keeping'' activity during the election held on September 30 and October 1, 1993. As a result, we find it unnecessary to pass on the judge's substantive finding that the Employer's allegation regarding list-keeping was without merit.

CERTIFICATION OF REPRESENTATIVE

IT IS CERTIFIED that a majority of the valid ballots have been cast for International Brotherhood of Teamsters Local 995, AFL–CIO; International Union of Operating Engineers Local 501, AFL–CIO; Local Joint Executive Board of Las Vegas, Culinary Workers Union Local 226 and Bartenders Union Local 165, affiliated with Hotel Employees & Restaurant Employees International Union, AFL–CIO, and that they are jointly the exclusive collective-bargaining representative of the employees in the following appropriate unit:

> All full-time and regular part-time employees employed by the Employer at its Las Vegas, Nevada facility, in the following classifications and departments, including: all front desk, PBX, valet parking, courtesy bus driver, warehouse, receiving, slot mechanic, food and beverage, housekeeping, bowling alley, ice rink, gift shop, nursery, and slot department employees, EXCLUDING engineering and maintenance employees, casino table game employees, keno, bingo, race and sport book employees, office clerical employees, confidential employees, guards, and all other employees, and supervisors as defined in the Act.

Brian J. Sweeney, for the General Counsel.
Michael T. Anderson, Esq. (McCracken, Stemerman, Bowen & Holsberry), of Las Vegas, Nevada, for the Respondent.
Norman H. Kirshman, Esq. (Kirshman, Harris & Cooper), of Las Vegas, Nevada, for the Employer.
Adam N. Stern, Esq. (Levy, Goldman & Levy), of Los Angeles, California, for the Teamsters and Operating Engineers Unions.

DECISION

STATEMENT OF THE CASE

DAVID G. HEILBRUN, Administrative Law Judge. This case was tried in Las Vegas, Nevada, on several dates from March 22 to May 11, 1994. In the unfair labor practice case the charge was filed October 29, 1993, by Santa Fe Operating Limited Partnership d/b/a Santa Fe Hotel and Casino (the Employer or Santa Fe), and the complaint was issued December 15, 1993. In the representation case petitions were filed by the unions identified above as Joint Petitioners (the Unions or Joint Petitioners), and these resulted in a Decision and Direction of Election issued by the Regional Director on September 2, 1993.

The complaint alleges that Local Joint Executive Board of Las Vegas comprising Culinary Workers Union Local 226 and Bartenders Union Local 165, affiliated with Hotel Employees & Restaurant Employees International Union (HERE), AFL–CIO (Respondent) through its agents verbally threatened employees of Santa Fe in the course of a preelection campaign and in violation of Section 8(b)(1)(A) of the National Labor Relations Act. As specified in paragraph 6 of the complaint, the particular unfair labor practice

allegations litigated in this consolidated proceeding were the following:

(a) On or about September 16, 1993, by an agent, whose identity is presently unknown to me, but who is known to the Respondent, threatened to slash the tires of an employee's vehicle in retaliation for that employee's not supporting the Respondent.

(b) In or about late August 1993, on a specific date presently not known by me, but which date is known by the Respondent, by Pappageorge, threatened an employee that if the Respondent won representation rights, employees who did not support the Respondent could easily be fired.

(c) In or about mid-September 1993, on a specific date presently not known by me, but which date is known by the Respondent, by Pappageorge, threatened an employee that if a majority of the employees voted for the Respondent, everyone would have to join the Respondent and honor a strike and if they did not, they would be fined.

(d) In or about early August 1993, on a specific date presently not known by me, but which date is known by the Respondent, by Kline, threatened an employee that his spouse's employment with the Employer would be in jeopardy if the employee's spouse did not support the Respondent and, moreover, that the employee's spouse would not be able to get another job in any casino where employees are represented by the Respondent.

(e) In or about mid-September 1993, on a specific date presently not known by me, but which date is known by the Respondent, by Kline, threatened an employee that any employee who voted against the Respondent or declined to be a member of the Respondent would not be able to get a job with any employer who had a union contract and their employment with the Employer would be terminated.

(f) In or about mid-September 1993, on a specific date presently not known by me, but which date is known by the Respondent, by Kline, threatened an employee that because the employee had signed an authorization card, if there was a strike, that employee would have to go out on strike and/or pay additional union dues.

The Decision and Direction of Election that issued pursuant to these jointly filed petitions resulted in a secret ballot election conducted on September 30 and October 1, 1993, at the Employer's premises in the unit of hotel, food and beverage, slot department employees and associated occupations. Results of this election were that from the 600 employees eligible to vote 570 valid ballots were cast, with 300 for the Joint Petitioners, 241 against the Joint Petitioners, and 31 ballots challenged, these being insufficient in number to affect the results of the election.

Timely objections to conduct of the election and to conduct affecting the results of the election were filed by the Employer, and on October 26, 1993, the Regional Director issued an order directing hearing on objections, later to be consolidated with the unfair labor practice case. The specific objections litigated in this consolidated proceeding were the following:

1. Electioneering was conducted by the Petitioner in the general vicinity of the polling area. In particular, electioneering was directed at the employee parking lot where the employees arrived and departed during the polling.

2. Employees were told by the Petitioners' agents they could not vote if they had not signed union authorization cards.

3. Representatives of management, i.e., floorpersons in the Slot Department, were allowed by the Regional Director and the Board to vote and are unlawfully included in the bargaining unit.

4. Employees were told by the Petitioners' agents that if they did not support the Union, they would be fired.

5. Employees were generally intimidated by union supporters with visits to their homes, damage to their vehicles, and harassment while performing their job duties.

6. Representatives of the Petitioners told employees that after the election membership in the Petitioners' labor organizations would be a condition of employment at the Santa Fe Hotel & Casino and showed employees copies of article 3 of the labor agreements in effect at the Sahara and Hacienda Hotels as proof that such condition existed at the Sahara and Hacienda Hotels. A copy of article 3 is attached hereto as Exhibit A. Such statements were made during visits to employees' homes.

7. Representatives of the Petitioners showed employees blank ballots indicating the ballots were official NLRB ballots, and instructed employees how to vote for the Union.

By these and other acts, the Petitioners restrained and coerced employees in their exercise of rights guaranteed by Section 7 of the Act.

On the entire record, including my observation of the demeanor of witnesses, and after considering posthearing briefs filed by the General Counsel, the Employer, and Respondent and Joint Petitioners (consolidated), I make the following

FINDINGS OF FACT

I. JURISDICTION

The Employer, a Nevada limited partnership, is engaged in the hotel and gaming industry at its facility in Las Vegas, Nevada, where it annually derives gross revenues in excess of $500,000 while purchasing and receiving goods or services in interstate commerce valued in excess of $50,000 directly from points outside the State of Nevada. On these admitted or uncontroverted facts I find that Santa Fe is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that Respondent and Joint Petitioners are each labor organizations within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *Overview*

Beginning in early 1992 Respondent had explored which property as among the newer casino hotels opening or having opened in Las Vegas might most suitably lead to organization. By late that year the Santa Fe was selected for a campaign of unionizing, with the chief strategy being to obtain a large majority of authorization cards from employees and seek voluntary recognition on that basis. A presentation of such a claimed majority was eventually made to principal Owner Paul Lowden, a person having substantial ownership interests in both the Sahara and Hacienda casino hotels of Las Vegas, however voluntary recognition was declined. Early in 1993 the Unions initiated a formal representation

proceeding by the serial filing of RC petitions that have been consolidated in this matter.

Respondent commenced an active preelection campaign of mounting employee support shortly before the Decision and Direction of Election issued, and at a time prior to the earliest date of alleged unfair labor practice conduct pleaded in the complaint or ''[I]n or about early August 1993.'' The principal objective was to recontact those employees whose signed authorization card represented their early interest in having collective representation, and solidifying that interest as the time of an anticipated election approached. As to these persons the Unions intended to urge that they wear a ''Yes'' button while at work and urge others to do so. The Unions were also alert to follow other leads that might create a similar interest from persons not as yet known to them. While numerous persuasive techniques were used in an effort to win the election, the sole activity to be examined for unfair labor practice characteristics is that of personal home visits (or telephoning to employee homes), and the matter of what verbalisms were used by agents of Respondent in making such communications.

Respondent's preelection campaign was principally headed by Local 226 Organizer Kevin Kline, assisted by less experienced colleagues Ted Pappageorge, Christine Walker, and Isaiah (Ike) Powell. Each of these colleagues had work experience in the Las Vegas gaming industry. They termed their occupational titles with the Culinary Union as business agent (and organizer) or union representative. Their service with Respondent at the material time of events in this case ranged from about 2 years for Pappageorge to Powell being new at the job. Spanish-speaking Business Agent Aurelio Carillo was also used for translating purposes as necessary, and occasionally several other salaried staff members of the Culinary Union were used to reinforce the undertaking. All of these assistants to Kline are admitted agents of Respondent. A total of about 400 employees were visited at their homes over the course of Respondent's entire approximate 2-month intense preelection campaign. Kline himself went out on about 40 home visits, while Pappageorge, Walker, and Powell each estimated the number of their home visits as about 50, 90, and 60, respectively. Additionally, an informal organizing committee of employees from the bargaining unit who actively supported the Unions was formed, and used to increase the spread of direct information to employees at their homes, serve as an accompanying home visitor under the Unions' ''always in pairs'' policy, and assist in language translating as needed. Occasionally a special nonemployee person would be used to aid the Unions, and to the extent this associates to issues of the unfair labor practice case that fact will be discussed below.

Kline and the regular agents concentrated their basis of communicating persuasive information to employees during home visits on three documents. The first was a comparison chart of features from the Sahara/Hacienda labor contracts, including an item termed ''job security.'' The second was a pie chart showing the amount of revenue generated by the Santa Fe in percentage terms relative to that generated by the Sahara and Hacienda each alone. Finally, a document headed ''Spring '94: Deadline'' emphasized the importance of securing prompt bargaining recognition for the Unions at the Santa Fe in order to fold its employees into those for whom the other sister properties would negotiate with Respondent starting in 1994 as labor contracts expired.

Of the six specific unfair labor practice issues stated above as taken from paragraph 6 of the complaint, three of them associate to efforts by Respondent to win support from an extended family of persons mostly surnamed Robles and Pedraza. This was done because Respondent's lead agents believed the matriarch of this family, as well as others among the next younger generation, were particularly influential among employees with whom they closely worked.

B. *Context*

Respondent is a predominant union in Las Vegas, with collective-bargaining agreements at many of the major hotel and casino properties, including, as already stated, the Sahara and Hacienda as sister establishments of the Santa Fe. In consequence of this pervasive influence by Respondent with the Las Vegas employment community, and the fact of notoriety arising from past or current strikes at certain hotel and casino properties, various subjects, beliefs and perceptions were present in, or suggested by, the persuasions advanced by agents of Respondent and the countering inquiries or reactions of employees contacted.

The several allegations of the complaint involved extensive or continuing communications in which these factors were present in at least the following regards.

1. Concern among employees as to general economic advantage of collective representation.

2. Concern among employees as to whether their support of the Unions, if known to or learned by their employer, would result in any job-related adversity.

3. Concern among employees as to the commencement of any dues-paying obligation, and relatedly the power for it to be collected from them by the Unions. This factor is necessarily connected to Nevada's status as a right-to-work State.

4. Concern among employees as to the prospect of strikes at their place of work, plus the related questions of whether they must join in and whether fines may be enforced against them for not doing so.

5. Concern among employees as to whether a union of Respondent's known prominence can affect employment at Las Vegas area hotel and casino properties generally, or by any special influence in the acquisition, retention, or restoration of employment.

6. Ability among employees to evaluate presentations made by Respondent's agents as to wage and benefit increases claimed to result from a union election victory. This factor arises to the extent that written projections of such economic improvements are presented abstractly to employees or are argued as likely to follow because of provisions in Respondent's current collective-bargaining agreements of the vicinity.

7. Ability among employees to evaluate institutional or technical arguments of Respondent's agents, such as whether a provision in the Sahara/Hacienda contracts did or did not bar Respondent from attempting to organize employees of the Santa Fe.

The foregoing listing of subjects, beliefs, and perceptions are given as context to the fact that the several episodes, or running attempts of communication with influential employees, comprising the unfair labor practice allegations involved

much discourse between participants which was merely preliminary to, or unconnected with, the asserted remarks that allegedly amount to an unlawful threat. Therefore in setting forth the version of each allegation, I shall not recite the frequent and extensive arguments, opinions, or explanations that are so often a part of the episode or continuum.

The emphasis in stating what the salient versions of each allegation in the complaint are found to be, shall instead focus only on key passages in conversations. To a large extent this process will revolve around ''the rap,'' a term that came into use among officials of the Unions and their key supporters to describe the most emphasized portions of the Unions' intended message to employees. This focus is, in turn, critically affected by my several credibility assessments of the respective participants in such conversations.

C. *Material Facts*

1. Complaint paragraph 6(a)

Norman Kampelman has been employed by the Santa Fe since about July 1993 as a bowling mechanic and lane technician.[1] He was visited at his home on or about September 16 by two persons representing the Unions, who arrived with the purpose of winning his support. The first and exclusive spokesperson during the visit was Karl Lechow, the assistant regional director for HERE at its western region in Los Angeles. He was participating specially on behalf of the Unions in the final weeks of the preelection campaign for extra assistance to Kline and his regular staff. He had also particularly undertaken to focus his efforts, as time would permit, on employees of the Employer's bowling center plus other small operations where support for the Unions was believed to be weak. Lechow, an admitted agent of the Unions, was accompanied by Santiago Lazo, a then-currently striking employee of the Frontier Hotel and Casino. He was ethnically Hispanic and bilingual in his native language, Spanish, along with some comprehension and speaking ability in English.

Kampelman opened his apartment door to Lechow's knock, and stepped only out onto the threshold for discussion with his visitors. After introductions and guarded civilities, Lechow attempted his prounion presentation. It was neither welcome nor persuasive to Kampelman, who debated the merits of some claims made by Lechow and increasingly showed signs of impatience and an intention to return inside his home. Lechow impulsively placed a momentary restraint on Kampelman by pressing against his shoulder causing Kampelman's hand to draw away from the doorknob. With the visit increasingly appearing to be futile Lechow became louder and more animated in his partisan remarks, but then attempted a more ingratiating conclusion by offering a handshake for a second time as Kampelman finally and unmistakably told both visitors to leave his property. Up to this time Lazo had been silent, merely watching and listening to the uncomfortable arguing that went on between Kampelman and Lechow. The two visitors turned and started walking away, as to which Kampelman testified that Lazo called back at him ''what if your tires were slashed?'' Kampelman added how he answered this with an epithet as the two men continued away from him toward the street beyond. Kampelman estimated the distance between himself and Lazo as about 10 feet when the alleged tire-slashing statement was made. Lechow and Lazo both deny such a remark was made, recalling instead that Kampelman had simply reentered his home while closing the door as they walked away without further comment. Based on my rejection of Kampelman's testimony as discussed below, I find that the tire-slashing statement was not made. In consequence I hold that paragraph 6(a) of the complaint has not been established from the proofs.

2. Complaint paragraph 6(b)

Pappageorge visited the home of employee Alice Lints around late August, accompanied by Powell. She is a person employed as a booth cashier at the time, having then been recently promoted from change person. A 1-1/2-hour visit ensued in which husband Edward Lints was also present. He was a person experienced in unionism because of prior employment, and of a voluble personality. Edward Lints testified that in the course of Respondent's agents' visit Pappageorge said his wife could be fired for not supporting the Unions. Edward Lints bristled at this, causing Pappageorge to answer that he could say what he wanted. Alice Lints also testified that Pappageorge said she could be easily fired for not supporting the Unions. In cross-examination her testimony was refined to the point of establishing that the claimed remark was made the course of Pappageorge discussing job security from having a union.

Pappageorge testified that the visit was totally amiable, and he is corroborated in this by Powell. Pappageorge recalled making ''the rap'' to Alice Lints, including the subject of job security with which she was concerned. He believed the visit concluded with an urging that Alice Lints wear a ''Yes'' button at work, which she assured him would be done. Pappageorge also denied that in the sense meant by this allegation he told Alice Lints she would have to join the Union to keep her job, or that by not supporting it she could be easily fired if it got in at the Santa Fe.

I find the testimony of both Edward and Alice Lints to be highly unreliable, and reject it in all salient regards. In consequence I hold that paragraph 6(b) of the complaint has not been established from the proofs.

3. Complaint paragraph 6(c)

Cynthia Toms was an account and control supervisor in the Employer's bowling center. She testified to having three home visits during September, and in the course of the second one being told by Pappageorge, who was accompanied at the time by Lechow, that once the Unions were voted in she would have to pay dues, be a union member whether she liked it or not, and would have to honor picket lines in the event of a strike for which people could get hurt for crossing one. Toms also testified that Pappageorge said employees could be fined by the Unions, but she related this subject to a failure to pay dues.

Pappageorge testified that in a meeting with Toms during September subsequent to first visiting her at home, and while accompanied by Lechow, a number of subjects were discussed. He had continued persuasional efforts with her, but denied that the subject of union security was covered except by his and Lechow's verbal explanation of principles. Pappageorge also denied that at any time during this visit he

[1] All dates and named months hereafter are in 1993, unless indicated otherwise.

said that Toms would have to pay union dues or be fined if the Unions got in, would have to go on strike, or could be fined or get hurt for not having done so. Lechow corroborated these denials.

I discredit the testimony of Toms and reject her version of the extent and nature of remarks exchanged during the home visit by Pappageorge and Lechow. In consequence I hold that paragraph 6(c) of the complaint has not been established from the proofs.

4. Complaint paragraphs 6(d), (e), and (f)

The three final allegations in the complaint as to threats having been made all involve the Robles-Pedraza family. An originating point for discussion of these is in the fall of 1992 when Esperanza Robles, a casino porter employed at the Santa Fe and mother of Frank Robles, Arnold Robles, Blanca Robles (Maltese), and Connie Robles (Pedraza), was first identified as a probable supporter of the Unions. Each of her daughters, as well as their husbands Arnold Maltese and Jaime Pedraza, plus her son Arnold Robles, were also employed by the Santa Fe. Kline recalled first seeing Esperanza Robles when she appeared at the union hall in late 1992 to pick up a packet of organizing material consisting of literature and ''Yes'' buttons. He next saw her on July 12, the date Respondent started its intensive home visiting. Esperanza Robles is essentially Spanish-speaking, and Kline was accompanied on this occasion by Hernan Andrade who translated as necessary. He next saw her at home on July 28, while accompanied by two female employees of the Santa Fe, and again in late August with Lazo. Kline testified that Esperanza, who he believed could potentially effectively encourage fellow workers of her department to support the Unions, was not coming to the regular Tuesday meeting of its inside employee committee. Therefore during August he stopped at her home each Monday, hoping to regenerate her more active support. This was unavailing, although at times of these Monday attempts Frank Robles and Arnold Robles might be there for passing discussion. Frank Robles testified that in one conversation between Kline and his mother, during which he translated for her, Kline had said she would get fired for voting no after which when the Unions won they would have their ways of finding out how employees had voted. By late August it seemed to Kline that Esperanza had been scared off from supporting the Unions by the Employer's own antiunion literature and internal communicating of the same nature made generally to employees.

Kline's first visit to the trailer home of Jaime Pedraza and his wife Connie, and Arnold Maltese and his wife Blanca, was on July 19. It was prompted because Arnold Maltese had been a card signer during the prepetition undertakings. Kline continued visiting this home later in July and throughout August and beyond. However the attempted persuasions toward unionizing became complicated by discharges from employment at the Santa Fe of Arnold Robles in late July and Jaime Pedraza in early September. Additionally, Connie Pedraza, who Kline had hoped would become influential in organizing the food servers, progressively lost interest in the Unions.

In support of the final three allegations of the complaint, Jaime Pedraza testified that Kline had told him during a telephone conversation that if Connie did not go prounion she would lose her job when the Unions came in and be blackballed from working in another ''Union house.'' Jaime added that Kline repeated this in a subsequent telephone conversation, and he relayed the gist of such remarks to Connie as she corroborated was done.

The testimony of Blanca was also advanced in support of the complaint, and as to this she asserted that Kline had said to her personally that people who vote ''no'' would no longer be with the Santa Fe because the Unions would come in, and that she could not revoke her authorization card. He said she would be considered being with the Unions because of this, and if she did not want to go out on any strike she would have to pay additional union dues because of such a refusal, and that if she and other employees were not union members they would not be able to work at another union house.

The testimony of Connie Pedraza in support of issues raised by the complaint, and as will be associated to the objections below, is disjointed, separate, and apart from considerations of credibility. She was first hired in March as a bus person, and on her first day at work was influenced to begin wearing a ''Yes'' button and sign an authorization card by a fellow employee named Mario. By around the summer of 1993 she recalled having five to six visits at her home from persons associated with the Unions. By this time she had become disinterested in supporting the Unions, however the visitors tried to persuade her otherwise. On the second visit two persons unknown to her by name stated that even though she had begun wearing a ''No'' button she could still vote for the Unions. They added that it actually did not matter because her signed card meant that money would be taken out of her pay for the Unions. On the job she recalled experiencing an extreme change in attitude from Mario after she had begun to show opposition to the Unions by what she displayed and what she said to fellow workers. At that point Mario began acting rudely toward her and even worse beginning vile name-calling of her. In her bussing position she took instructions from two hostesses named Jean and Lila. Both these women had told her they ''helped out'' with the Unions. After Connie Pedraza switched to show she was against the Unions she testified that both hostesses gave her more workstations than other bussers, and tried to prohibit her from talking about the union campaign when employees gathered together. These aggravations alleviated somewhat after she complained to a food and beverage manager. However Jean and Lila continued to tell her that the Unions after coming in to the Santa Fe would know who had voted against them, and by her wearing the ''No'' button would mean she had done so which would lead to her being fired. Finally Connie Pedraza testified that in a home visit from a woman and a man, the latter of whom gave his name as Kevin, the woman told her that she would get fired for not wearing a ''Yes'' button. However she generally associated this topic with other statements from union visitors, that ''in case'' she got fired the Unions could not help her if she had not been openly wearing the ''Yes'' button.

I discredit the testimony of Jaime Pedraza and Blance Robles Maltese, as well as the collateral and connected testimony of Frank Robles and Connie Robles Pedraza, and reject all versions of such testimony that would establish commentary of Kline to have been in the nature of a threat or anything more than the Unions' standard explanation in describing or elaborating on its ''rap.'' In consequence I hold

that paragraphs 6(d), (e), and (f) of the complaint have not been established from the proofs.

D. *Credibility*

The critical witnesses of the unfair labor practice case are those who were called to support allegations of paragraph 6 of the complaint, and those named in this operative paragraph as having uttered threats constituting restraint and coercion of employees. In the case of Lazo I also separately assess the credibility of Lechow, because his close presence at the exact moment of the alleged threat warrants such comment.

Edward Lints—This individual was partisan, combative, and glaringly opinionated. He revealed himself to be overtly temperamental to a point that I believe his ability if not intention with respect to the truth is impaired. Any earnest-seeming demeanor was totally lacking, and he fell well short of showing a genuineness of purpose and memory as to justify any belief on my part of his testimonial offerings. He is discredited.

Alice Lints—This individual was palpably weak and uncertain in demeanor. She utterly failed to display an assurance in her own independent memory, except as to suggested instances about which I remain steadfastly skeptical. She was hesitant and bewildered by cross-examination to the point that doubt is cast on her entire renditions. It is on this basis that I have rejected her testimony in full.

Jaime Pedraza—This individual showed insufficient conviction in his own testimony, and displayed internal inconsistencies while presenting with an unconvincing demeanor. I am satisfied that he did not advance a true version of happenings, and on the basis of overall poor demeanor reject his testimony.

Frank Robles, Jr.—This individual was a totally discreditable witness. He appeared plainly unable to distinguish fact from fancifulness. He was dogmatic on direct examination; then openly hostile during cross-examination. I assess him as nothing more than a stalking-horse in support of positions of both General Counsel and the Employer, resulting in my emphatic and total rejection of his testimony.

Blanca Robles—This relatively sophisticated individual nevertheless presented with a demeanor inviting disbelief in her testimony. She was vacillating and argumentative; her testimony seemingly tailored to a preconceived view of the situation. Her demeanor worsened as examination proceeded, leaving residual value so negligible that I confidently reject all salient testimony on her part.

Cynthia Toms—This individual also displayed an unconvincing demeanor in suspect testimony about the certainty of some assertions while being plainly confused as to others. The vagaries of her testimony were compounded as to an evaluation by occasional long, pensive pauses before she could formulate an answer. Overall there appeared a rather vague quality to what she advanced as the essence of conversations, and in the last analysis I have no hesitancy in rejecting her testimony where it conflicts with that of witnesses I have found credible.

Norman Kampelman—This individual seemed almost palpably eager for attention, without regard to fundamental truth-telling. Except for the inconsequential fact that I believe he was touched during the episode at his front door, his entire presentation otherwise invited extreme disbelief. My chosen evaluation on demeanor grounds is to reject in all salient regards his version of the episode about which he was called as a witness. I find the fact of the case to be that a tire-slashing statement was not made to him, nor any utterance possibly heard to be such.

Connie (Conception) Pedraza—This witness presented an enigmatic demeanor in the strict sense, however on balance her testimony was unconvincing. It showed little comprehension of actual facts, instead being vague and given to vacillation. Before her testimony concluded she had seemingly resigned herself to conveniently uttering words without meaning, connectedness, consistency or truth. In consequence she is fully discredited.

Santiago Lazo—This witness exhibited an adequately convincing demeanor, such that I credit his denial of having made the tire-slashing remark. In doing so I do not rely on the verbal demonstration of his ability to do so. The phonic result of this demonstration was such that I did not consider it created comprehensible English language words. It was instead only strange and unnatural, however that leaves open the question of whether intentionally slurred by Lazo or uttered without a true ability to form necessary word sounds of his nonnative language. Overall the demonstration supported his denial of having uttered the threat, however I expressly decline to rely in any way on this unusual mode of proof. Beyond that I accord Lazo credence.

Karl Lechow—This is another voluble individual. Lechow testified with smug overassurance and self-congratulatory asides as to organizing skills and instincts. Plainly he is experienced from more than 20 years in the field, however the issue is credibility. The Employer has assailed this in perhaps more harsh terms than for any other opposing witness. My own assessment, except for believing that during animated close quarters he did lightly press Kampelman's upper body, is that Lechow had basically genuine intentions at telling the truth. This, to me, was the ultimate sense from an observation of demeanor complicated by the extent of testimony, the subject matter, and the intrinsic awkwardness of the episode described. I am also quite aware of the extreme partisan interests harbored by Lechow, as well as others attached to the Unions whose credibility assessment shall follow. Overall, however, I credit the significant denial by Lechow that Lazo uttered any remark as the Kampelman visit concluded that could have been taken as a tire-slashing threat.

Ted Pappageorge—This individual showed an adequate intention to express the more accurate version of statements made in the course of his home visits which the case concerns. It is actually true that Pappageorge's credibility is enhanced because of the extremely low esteem which I hold for the Lints' and Toms' testimony. However his appearance, mannerisms, and delivery were such that he is independently believable on demeanor grounds alone, and it is that basis which I use to accept his versions of the dialogues that were exchanged.

Kevin Kline—This individual is the person at the very center of the Unions' entire organizing goal, and critically involved in several of the more complicated allegations of the complaint. Although glib and possessed of maximum partisan interests, I found his testimonial demeanor to be persuasively favorable. Kline was candid-seeming and promptly forthright in his answers. He maintained notable consistency in the numerous times he was required to repeat conversational se-

quences or reconstruct how a particular subject unfolded between speakers or in a group setting. I fully credit his adequately convincing testimony, and on that basis accept his version of the operative episodes which are pleaded in the three final allegations of paragraph 6 of the complaint.

E. *Discussion of Other Contentions*

There are numerous collateral contentions made by the parties as they seek a favorable impact from evidence in the case. Taking first that of General Counsel, I note points made as to contradictions respecting details of the Lechow-Lazo visit with Kampelman. General Counsel also notes that Lazo's English language fluency should have been markedly better than he would have it appear. Further, General Counsel notes that as a Frontier Hotel striker Lazo could be viewed as plainly biased and possessed of personal interest in the outcome of these proceedings. I have considered the disparate description made by Lazo as compared to Lechow of the tone, and voice levels at the Kampelman home entryway, but do not consider it of great significance. As to Lazo himself, this 53-year old, somewhat traveled man has had adequate personal and cultural exposure to the English language, and in fact began his testimony with English responses even though an interpreter was provided. This point, while valid to advance, subordinates to the universal notion of demeanor impression, and it is that by which I have credited Lazo. His claimed bias is an indirect one, and while noted I do not accord further weight to it. Finally General Counsel notes that Respondent did not call any corroborating employee witnesses as to how the home visits were generally carried out. In a case rife with unschooled perceptions and serious misperceptions, I see no reason to fault Respondent for not calling witnesses beyond the absolute minimum necessary to directly confront allegations of the complaint.

The Employer contends that Pappageorge and Lechow displayed a page of the Sahara/Hacienda labor contract constituting the ''union security'' article to Toms, in a contrived effort to convince her that union membership was inevitable at the Santa Fe. While a page to this effect does exist, and the union security language is neutralized or made contingent on a change in state law, the more important fact is that I believe Toms is mistaken in claiming to have seen this. Pappageorge and Lechow both credibly denied showing it to her, and I am satisfied that she has confused it with the similar appearing ''union again'' page regarding the parties' memorandum of agreement as to future organizing of properties, but excepting the Santa Fe from management's agreed ''positive approach'' as to unionized properties. This is the document displayed and discussed with her in explanation of how the Unions were legitimately able to attempt a win of bargaining rights at the Santa Fe.

The Employer and General Counsel contend that Pappageorge ''admitted'' telling employees they ''could easily be fired.'' This skirts the more controlling evidence that the Unions' ''rap'' involved a lawful two-part commentary on job security. The first part was a simple ideological argument that having a union would provide a structured, experienced organization to assist in reversing adverse job action. The second part was the tactical point that by wearing a ''Yes'' button openly at work, a person would have the basis to establish how their preference for collective representation was known, and that this factor would, to that extent, tend to be proven in a formal protest against discrimination.

Additionally, Pappageorge admittedly told employees, as Kline believed was so, that by signing an authorization card employees had become ''members of Respondent.'' Regardless of the accuracy of claiming this, the point remains that if in error this belief alone does not threaten employees in any manner impacting the election, particularly when agents of Respondent consistently explained that no dues-paying obligation arose at this initial point of union organizing. Also, it is contended Kline's inconclusive consideration of whether to prompt Arnold Robles into saying he was wearing a union button at the time of being fired, and relatedly whether to file Board charges on behalf of Arnold Robles and over Jaime Pedraza being fired, shows that Kline knowingly embraced ''false'' charges. This argument fails because the only involvement was Kline thinking about it, and upon weighing known facts taking no action.

General Counsel contends that paragraph 6(e) of the complaint is supported because of ''context'' to a statement of Kline to Blanca Maltese that people who cross a picket line lose their jobs. The situation referred to was a past instance known to Kline of Arnold Maltese having taken a job at the Horseshoe casino hotel (Binion's) while a strike was in progress. Arnold Maltese was subsequently released as a replacement employee subordinated to a returning striker. Kline's commentary on this event, and indeed the coolness later experienced by Arnold Maltese from personnel at the Unions' hall, does not amount to an unfair labor practice or support any inference that Kline's testimonial denials are invalid.

The Unions contend that the Employer artificially rehired Jaime Pedraza and Arnold Robles in order to obtain testimony from them which would support the Employer's litigation position here. Although the Unions have prevailed with respect to oral testimony of Jaime Pedraza on demeanor grounds, I comment on this contention. As noted above, Arnold Robles had been fired for fighting on the premises in late July, and Jaime Pedraza was fired in early September for an accumulated record of not clocking in to work. As to both such terminations the Unions' representatives had made inconclusive suggestions about helping them get their jobs back.

After the election in around late October Esperanza Robles, Arnold Robles, and Jaime Pedraza appeared at the office of Denise Stoker, the executive housekeeper and porter manager. Both men had worked satisfactorily under her supervision, however Arnold Robles was fired over her protest by the Employer's security department, while Jaime Pedraza was fired because of his incessant disregard of the clocking in rule. Jaime Pedraza explained to Stoker that the purpose in appearing was to give her their written statements for the ''proper people'' to see. He described his own as a statement of harassment of himself and his family. The upshot was contact to General Manager Henry Ricci who read both statements, and an ultimate reinstatement to work of both Arnold Robles and Jaime Pedraza. Stoker had learned from Ricci that he knew Arnold Robles was the son of Esperanza. The fuller context of these dynamics is that the Santa Fe, over Ricci's name, had promptly issued a postelection notice to employees soliciting contact from any employee believing themselves harassed or threatened. A second notice soon

after this went further in requesting ''help'' from employees to provide ''evidence in support'' of the Employer's objections to the election.

While an inference can be drawn from these events, I decline to do so. The Employer's policies as to discharge and reinstatement are not so settled as to disallow exceptions in particular cases. Manager Stoker was favorably inclined toward both Arnold Robles and Jaime Pedraza, and turnover in the positions involved is inferred to be high. This outlook is not inconsistent with evidence from personnel records that Jackie Failing, Lorna Smith, Jermanine McCormick, and Frederick Wright were each rehired after having been previously involuntarily terminated from employment at the Santa Fe. For these reasons I do not further discount the testimony of Jaime Pedraza beyond discrediting it on demeanor grounds.

There are also contentions that concern possible influence to the testimony of other witnesses advanced by General Counsel and the Employer. In the case of Alice Lints, she had been promoted to booth cashier in February 1994 shortly before the hearing opened, however this was explained to be temporary in nature to fill in for a person on extended absence. Toms had also been granted medical benefits by the Employer after a long delay extending into late 1993, and was, in addition, promoted to her present supervisory position with a $1.50-hourly-rate increase in December. Her explanation established that for the first 1-1/2-year period of employment in the bowling center she was classified as a ''steady extra'' employee and had signed an acknowledgment of not receiving medical benefits. Insofar as her promotion in December was concerned, Toms reconstructed from the changing workforce how she was the most senior person in line for the job, save only former incumbent Jimmy Imasa who was not eligible because of being able to work only part-time. Both Connie Pedraza and Blanca Maltese were promoted in early 1994, to the respective positions of food server and PBX operator. In both cases this resulted from their each being the most senior person for a vacant position, and it was one they had both been known as aspiring to during most of their earlier employment. In regard all the above four instances, I do not assess the evidence, including employment history documentation, and testimony of management personnel Anita McFarlin, hotel manager, Alvin (Bud) Horn, bowling center manager, and John Sou, food and beverage director, as amounting to a showing that favorable treatment was accorded by the employer to solicit and acquire beneficial testimony from various individuals. I thus disregard the suspicions of undue influence, and rest my discrediting of these witnesses as to principal issues of the total case, as done with Jaime Pedraza, on the demeanor grounds alone that are stated above.

CONCLUSION OF LAW

I sum up the overall treatment of allegations and contentions founded in paragraph 6 of the complaint by rendering a conclusion of law that Respondent has not in any manner violated the Act.

THE REPRESENTATION CASE

A. *Objection No. 1*

Michael Dias, presently employed at the Santa Fe as a barback, provided testimony in regard to this objection. He was one of the individuals participating with some regularity in activities of the Unions' in-house organizing committee. This will be set forth in more detail with the discussion of Objection 5 below.

Dias testified that when the election became imminent he was instructed to talk with other employees and invite them to meet at a trailer so that a bloc voting for the Joint Petitioners could be carried out. Dias vaguely believed such an instruction originated from a Culinary Union representative. He further understood that the Unions would park a rented trailer outside the Santa Fe and offer rides toward the polling area to those who showed up. He did not recall that during the advance planning for this activity any mention was made of keeping a record of who checked in at the trailer. A large 4-by-10 foot size listing of all eligible voters' names was, however, mounted on the side of the trailer. Other accessories to this trailer siting were a Culinary Union banner staked in the ground next to it, and a pull trailer showing the union name.

The trailer in question was parked off a public road from which the view line was generally toward the rear of the overall casino facility. It looked across the road, and through a locked, chain-link fence toward the large and prominently marked ice-skating arena and bowling center. The fence was a containment boundary for a large casino customer parking area, as such spread around from the main front of the facility where primary parking space was located, and accessible by turning off the main highway passing the Santa Fe. The actual polling place was inside this back portion of the facility, reached by entering the ice-skating arena space and proceeding through the entire bowling center to the actual room in which this Board-supervised election activity was fulfilled. To the unspecified extent that Dias was present during the election hours of September 30 and October 1, he observed that employees would appear at the trailer and be invited for a van ride traveling the streets necessary to reach the Santa Fe's front entrance and proceed around to where the ice-skating arena was situated. The vans were rented vehicles with no identifying signs on them. He was a volunteer van driver for the persons who used this assistance in the process of voting. The actual point of passengers leaving the van after the U-shaped transit of about one-half mile around the Santa Fe's perimeter was a point 20–30 feet from the ice-skating arena entrance, after which employees would walk inside and through the adjoining bowling center to the interior polling place. This total foot travel was estimated at 40 yards. There is no evidence that Dias, or any other employee committee member, or any staff representative of the Unions, accompanied any voter more close to the polling area than this described point.

Dias found the participation a ''pretty exciting'' time, and that he undertook a ''little bit'' of conversation with his riders as to whether they were about to vote ''yes.'' This was a matter of his own personal curiosity, and not all van riders

gave him an answer. Dias testified that he had not been instructed by anybody to make this inquiry. He did recall that when voters arrived back at the trailer on a return van ride, their names were highlighted on the master list by a colored marker. Dias understood the significance of such marking to be that it meant the person had ''showed up.''

The scope of Objection 1 must first be established. Here the Employer relies on *American Safety Equipment Corp*., 234 NLRB 501 (1978), holding that a Regional Director cannot properly ignore evidence relevant to the conduct of an election simply because such is not specifically mentioned in a party's objections. The Unions' countervailing argument is that a party is not allowed to raise allegations of misconduct beyond those given in timely filed objections. *Rhone-Poulenc, Inc*., 271 NLRB 1008 (1984).

This explicit and timely Objection 1 based on principles of regulated electioneering did not suggest any other basis related to this activity. Yet the posting of an employee list was prominently done and maintained during the entire 2-day period of the election. The Employer's own Exhibit 9, a 17-cut series of local area television station reporting of the important election shows that early in the process, and by frequently repeated footage, the Unions' trailer and the general scene around it was apparent. The departmentalized list of voters was sufficiently large in size as to give notice that some use would be made of it. In these circumstances I do not believe the Employer can avoid the consequence of being responsible to particularize all conduct associated to the highly visible trailer. It did, after all, remain in place for a minimum of 36 hours, and from what is known the list was evident during the entire time.

In such circumstances I believe *Rhone-Poulenc* is more controlling of the question whether the Employer may enjoy an entitlement to litigate voter list doctrine without having timely specified that factor in an objection. *Rhone-Poulenc* requires that an exception would need to be based on the clear and convincing showing of evidence not only being newly discovered but also previously unavailable. It cannot be said that such evidence was previously unavailable when the near-constant feature television reporting of this election showed the very basis of this supplemental claim. To hold otherwise would tolerate ''piecemeal submissions'' of objections, an undesirable consequence noted by the Board in *Framed Picture Enterprise*, 303 NLRB 722 (1991), where the Regional Director had obtained the relevant information during an unfair labor practice investigation based on preelection charges. See also *Burns International Security Services*, 256 NLRB 959 (1981). For this reason I conclude that electioneering doctrine alone may properly be considered the scope of Objection 1.

The source of guidance in resolution of electioneering-rooted objections is the frequently cited rule of *Milchem, Inc*., 170 NLRB 362 (1968). This case established fundamental barriers to electioneering in which nearness to the polling place, duration of behavior in question, and a need to prohibit any last minute unfairness of advantage between parties, all to be applied with ''a sense of realism,'' were key factors in determinations. Here the electioneering, while not actually silent, was principally a visual and logistical process of assembly, voluntary unity, and final vehicular transportation to vote. The trailer scene was distant from even the point where voters started foot passage to the windowless voting room, but also innocuously unaffecting of those employees who chose to reach the polling area by their own general transportation independent of reliance on any party and guided only by the official postings of election details. I believe the Unions have correctly cited *O'Brien Memorial*, 310 NLRB 943 (1993), to the extent that case resolved certain employer Objections 11 and 12 relating to a parking lot gathering and union-inspired ''vote yes'' chanting. Even then the Board denied review of a Regional Director's supplemental decision that overruled these objections on the basis that not only was the conduct not within the voting area but could not even be heard there. This is the exact opposite of cases where, such as in *Pepsi-Cola Bottling Co*., 291 NLRB 578 (1988), a ''boisterous'' gauntlet had to be passed through by voters, and the close election results involved left uncertain whether a free choice had been insured. See also *Rheem Mfg. Co*., 309 NLRB 459 (1992). I thus conclude that the spotting of this trailer, festooned though it was, and its use as a base of transporting voluntarily appearing employees, did not constitute objectionable election conduct.

On the arguably alternative grounds that the Employer has here validly raised the improper keeping of a voter list, I would not in any event be persuaded by the authority of *Marathon Le Tourneau Co*., 208 NLRB 213 (1974), or *Days Inn Management Co*., 299 NLRB 735 (1992), as cited by the Employer. In these cases there was no legitimate or understandable reason for employees to see their names being associated with the voting; whereas here their entire presence in the cycle of trailer-based activity was both voluntary and done in response to an invitation from the Joint Petitioners. In a significant item of testimony that I do specially credit, Toms recalled how Pappageorge made a preelection invitation that she ''go to a truck . . . off the property'' in order to proceed ''with other union people that were gonna vote yes.'' Where such an invitation has been accepted, and the ready alternative to unimpeded and confidential access to the election process was unimpaired, I do not see that the Joint Petitioners have breached any fundamental principle related to the identification of NLRB voters. Cf. *Red Lion*, 301 NLRB 33 (1991).

B. *Objection No. 2*

In its brief the Employer states that with the exception of Objection 1 (and 3) ''the gravamen of the objections and the allegations of the Complaint overlap.'' Since I shall propose that the entire complaint be dismissed, this Objection 2 is necessarily without merit. The Employer has not expressly briefed any presentation from the evidence as a whole that would otherwise create support for Objection 2. Further, I do not find any which would associate to the fair meaning of this Objection as stated. Accordingly, this objection is found not supported by credible evidence, and for that reason is overruled.

C. *Objection No. 3*

The facts underlying this objection were not developed at the hearing. It is apparently based on the Employer's contention that floorpersons employed in the slot department were included in the bargaining unit by the Regional Director's Decision and Direction of Election, contrary to its position that they should have been excluded. In any event this objec-

tion was not relitigated by express choice of the Employer, and for that reason is overruled.

D. *Objection No. 4*

This objection is resolved on the same basis of overlapping allegations as for Objection 2 above. The subject matter of Objection 4 is an explanation by agents of Joint Petitioners that open support of the organizing drive would tend to improve job security at the Santa Fe. Such an explanation could not reasonably be taken as a threat. In *Smithers Tire*, 308 NLRB 72 (1992), the Board restated its test of whether ''a remark can reasonably be interpreted by an employee as a threat.'' The remark, or admittedly repeated remarks of such agents here, is merely a partisan claim. There is no separate contention by the Employer, nor existence of additional evidence, that would permit Objection 4 to survive the entire complaint being dismissed. Accordingly, this objection is found not supported by credible evidence, and for that reason is overruled.

E. *Objection No. 5*

This objection most directly raises the issue of whether the Unions' employee committee of in-house supporters created an agency status as to activities carried out by its members. I therefore choose it to deal with the ''second legal issue'' of the case, as correctly described in the Employer's brief, that being whether persons participating in the employee committee were agents of the Joint Petitioners in terms of consequence flowing from their verbal statements.

The overall organizing task force of the Joint Petitioners could be thought of as a pyramid. At the top, headed by Kline, was an overall group of 10 regular staff representatives, 7 of whom resided in Las Vegas. Each home visit was conducted by a regular Culinary Union staff member, and to the extent possible this person was accompanied by a scheduled member of the employee committee. The training given to regular staff members by Kline was more intensive and specialized than that made available to employee committee participants. These latter individuals were not compensated for their time devoted to the campaign, although in Lazo's case he was given a compensatory credit against his picketing time obligation at the Frontier Hotel. Kline and his regular staff members repeatedly made clear to employee committee participants that they were to be the Unions' ''eyes and ears in the hotel,'' and they were provided prounion literature and buttons as well as being solicited to accompany a staffer on home visits to facilitate home entry and initial willingness of the resident to engage in conversation. The composition of the employee committee was an elastic number of about 50, as participants joined or dropped out at will.

Dias had involved himself with the employee committee around early 1993. He testified that the group met at the union hall each Tuesday to receive information. Dias himself attended about 15 meetings. Participants were allowed to pick up a special employee button reading ''Committee Leader'' for the Culinary Union. This was not an elected or formally designated capacity, on the contrary attendees were merely ''welcome'' to take such a button if they chose. Dias denied that participants received any compensation from the Joint Petitioners. In the course of such meetings Kline would typically display fliers and explain how to talk with fellow employees regarding wages in relation to becoming unionized. Dias recalled how volunteers were solicited by Kline and Pappageorge to assist in the making of home visits, however Dias himself never went out on one. Dias understood from this that the Unions felt an accompanying employee would put the visited employee more at ease, and he added that few on the employee committee were really knowledgeable about unions or how to make an influential presentation on their own. Finally, Dias knew nothing about the scheduling of employee committee participants for home visiting, a feature of committee activity about which Kline had credibly testified.

The status of persons participating in and identified with the employee committee is brought into question because Connie Pedraza testified that two hostesses in her work area burdened her with discriminatory assignments and a food server uttered crude or obscene criticism at her for having abandoned any open support for the Joint Petitioners. The Employer contends such conduct is imputable to the Joint Petitioners under agency principles. The Employer also contends that any testimony describing rank-and-file employees who fairly identified themselves as union activists should be considered on the agency issue in regard to any home visit ever made, threatened damage to vehicles, or harassment of nonactivist employees while they were at work.

Factors advanced by the Employer are that employee committee members were recruited, trained and given assignments by the Unions. The cost of committee literature and buttons was paid by the Unions, whose office telephone numbers appeared on handouts. A leaflet of general distribution was put out in the name of the ''Union Organizing Committee'' as an update on its organizing campaign. Further, a multipage graphic printing of pictures and brief statements from various employees referred to them as ''the Union'' and ''the Union Committee.'' The Employer relies primarily on *L & J Equipment Co*., 278 NLRB 485 (1986). However that Supplemental Decision and Order was an adoption of a Third Circuit remand as law of the case.

I believe Joint Petitioner's reliance on *Advance Products Corp*., 304 NLRB 436 (1991), is more controlling, for there as the case here the array of paid union organizers was appropriate to the size of the unit, while being constantly and prominently involved in the campaign. See also *Bristol Textile Co*., 277 NLRB 1637 (1986). Board decisions show much consistency over the years in regard to what conditions and configurations amount to agency status of an in-house employee committee. In *Cambridge Wire Cloth Co*., 256 NLRB 1135 at 1138–1139 (1981), the Board observed preliminarily that employee-members of such a committee are not, ''simply by virtue of such membership,'' agents of a union for purposes of adjudicating threats and statements. Such an employee-member was also noted to be strictly voluntary and not paid for their activities.

These and other considerations have been continued into more recent times. In *S. Lichtenberg & Co*., 296 NLRB 1302 (1989), the Board held no agency status existed where the group of self-designated individual employees became a ''somewhat transitory, amorphous group,'' adjunct to a professional union staff which personally and actively directed the union's election campaign. Further the Board noted that when such in-plant organizers engaged in conduct that was claimed to be objectionable, they did not represent this to be

done in the capacity of an organizer or that their views were those of the union involved. In *Windsor House C & D*, 309 NLRB 693 (1992), an international union representative was regularly responsible for the organizing campaign, while the employee committee had no formal structure with membership open to any interested attendee at union meetings and their support given voluntarily without pay. As these latter cases best describe the workings of the employee committee, I conclude that its collective members did not have an agency status to the Joint Petitioners. Accordingly, Objection 5 is overruled.

F. *Objection No. 6*

This objection is partially governed by the resolutions that apply to Objections 2 and 4 above. I have discredited any testimony of a generalized nature from the Employer's witnesses which would track the language of this objection. On the contrary I credit testimony of union agents to the effect that they consistently explained only the lawful basis of compulsory union membership, and the extent to which this was affected by Nevada state law. The testimony of Toms requires special comment because of her assertion that a page of contract language was actually shown to her in which the consequence of compulsory union membership appeared. However, I have discredited Toms, and this evaluation also applies to her special comment on the point, about which I clearly believe she is mistaken. Accordingly, I conclude that this objection is not supported by credible testimony, and is therefore overruled.

G. *Objection No. 7*

The only claimed evidence in support of this objection is testimony of Toms that on a visit by Pappageorge to her home he displayed a sample ballot to her with an ''X'' marked for the Joint Petitioners. Nothing about this sparse evidence permits a showing that such action other than meets the new test of *Irvington Nursing Care Services*, 312 NLRB 594 (1993), in such matters. The presumed encouragement and illustration of a vote for Joint Petitioners would not lead a person to believe that the Board had actually endorsed one of the parties in an election. Such an endorsement is emphatically disavowed by prominent language now appearing as a 'WARNING' on official Board ballots. Given this plain information that markings on the sample ballot would have been made by ''someone other than the NLRB,'' Toms could not have been improperly influenced by such conduct. Accordingly, I conclude this objection is without merit as a matter of law, and is therefore overruled.

H. *Validity of Election*

The employer has argued generally that the necessary laboratory conditions for conduct of this election were ''seriously impaired'' as to warrant it being set aside. However, I have found from the credible evidence, and materially relevant documentary evidence, that neither unfair labor practice conduct nor the commission of any of the objected to matters has occurred. Certainly there was extensive activity by agents of the Joint Petitioners, by persons who continuously or from time to time served earnestly on the in-house employee committee, and indeed by individual employees with opinions to express or criticisms to voice against others not sharing their views. There is not, however, any showing that in this large 600-employee unit any atmosphere of fear and coercion arose as to suggest that a free choice in the election could not be made by each person eligible to vote. For this reason the doctrine of *Westwood Horizons Hotel*, 270 NLRB 802 (1984), *Picoma Industries*, 296 NLRB 498 (1989), and cases of similar import relied on by the Employer are not germane to a holding here. On the contrary, citing *Picoma*, id. at 500, I find that ''the credited evidence, evaluated cumulatively'' shows that the necessary laboratory conditions for this election remained intact, and in particular where the ''change of only a few votes'' would not have led to a different result. Accordingly, I confirm this election and shall recommend issuance of an appropriate certification.

Disposition

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[2]

ORDER

The complaint is dismissed.

IT IS FURTHER ORDERED that a certificate of representative issue to the Joint Petitioners in the following appropriate bargaining unit:

> All full-time and regular part-time employees employed by the Employer at its Las Vegas, Nevada facility, in the following classifications and departments, including: all front desk, PBX, valet parking, courtesy bus driver, warehouse, receiving, slot mechanic, food and beverage, housekeeping, bowling alley, ice rink, gift shop, nursery, and slot department employees, EXCLUDING engineering and maintenance employees, casino table game employees, keno, bingo, race and sport book employees, office clerical employees, confidential employees, guards, and all other employees, and supervisors as defined in the Act.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''